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JAMES R. BROWNING

No. 311.

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES STEEL CORPORATION (AMERICAN BRIDGE DIVISION) and LOCAL UNION 542, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

STUART ROTHMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

STANDAU E. WEINBRECHT,
Attorney,
National Labor Relations Board,
Washington 25, D. C.

CITATIONS

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The Board has filed a petition for certiorari to review the decision of the Court of Appeals in this case insofar as it denies enforcement of the reimbursement provisions of the remedy prescribed by the Board for the hiring arrangement which it and the Court found to be illegal. *National Labor Relations*

Board v. *United States Steel Corporation (American Bridge Division) and Local 542, International Union of Operating Engineers*, No. 228, this Term. That petition was filed to preserve the Board's position that it possesses authority to prescribe such remedy for an illegal hiring arrangement, pending a resolution of the question by this Court in *Local 60, United Brotherhood of Carpenters* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *Local 357, International Brotherhood of Teamsters*, Nos. 68 and 85, this Term, certiorari granted June 27, 1960. The instant conditional cross-petition seeks to have the Board's unfair labor practice findings, sustained by the court below, reviewed should this Court grant the Board's petition on the reimbursement phase of the case, No. 228. We submit that the cross-petition should be denied irrespective of the disposition of the Board's petition in No. 228, for the issues sought to be raised are evidentiary ones, and, since the court below has found that the Board's findings are supported by substantial evidence, there is no occasion for review by this Court.

In the Board's view, the cross-petition presents two questions: (1) whether there is substantial evidence to support the Board's finding that the Union and the Company entered into an arrangement which delegated exclusive hiring authority to the Union and provided that preference in employment would be accorded to union members; and (2) whether substantial evidence supports the Board's finding that employee Russell was denied employment as a result of the operation of this discriminatory hiring system.

The evidence summarized in the Board's petition in No. 228, pp. 4-6, and that detailed in the opinion of the Court of Appeals (Cross-pet. 23-25) furnish adequate support for the Board's unfair labor practice findings.[1]

The record shows that the Master Mechanic, who was selected by the Union, exercised complete control over the selection of operating engineers to be employed; he secured employees exclusively from the hiring hall maintained by Local 542; he was required by the Union rules to hire only those in good standing in the Union; and it does not appear that any non-union men were employed at the Morrisville plant. On these facts, the Board could conclude that there existed a hiring arrangement which limited employment to union members in good standing with the Union.[2] Similarly, in the light of Russell's long dispute with officials of the Local over the manner in which they conducted union affairs, it was within the Board's competence to conclude that his denial of employment, for work for which he was qualified, was attributable to his falling out of grace with the Union.

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[1] It may be noted that the Court of Appeals sat *en banc*, and all of its members except Chief Judge Biggs, who dissented on the hiring arrangement but not as to Russell (Cross-pet. 36), so concluded.

[2] The cases cited by petitioners (Cross-pet. 12-13) do not conflict in principle with the decision here, but are distinguishable on their facts.

For these reasons, the conditional cross-petition for certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

STUART ROTHMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

STANDAU E. WEINBRECHT,
Attorney,
National Labor Relations Board.

September, 1960.

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